BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ALI D., Petitioner, v. FRANK D. LANTERMAN REGIONAL CENTER, Respondent.	Case No.: L 2006090231 (Early Intervention Services Act, Govt. Code § 95000)

DECISION

The hearing in the above-captioned matter was held on October 12, 2006, at Los Angeles, California. Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings, presided.

Petitioner, Ali D., was represented by his mother, Mrs. D[1]. Respondent Frank D. Lanterman Regional Center (Respondent or FDLRC) was represented by Julie A. Ocheltree, Enright & Ocheltree. Mr. Bahram Ganjineh served as interpreter.

Evidence and argument was presented by the parties, and the matter was submitted for decision on the hearing date. The Administrative Law Judge hereby makes his factual findings, legal conclusions, and orders, as follows.

ISSUES PRESENTED

Several issues are presented in this case, all pertaining to the types of services that should be provided by the Respondent to the Petitioner. The Petitioner contends that the he should receive, in addition to other services being provided, music therapy, equestrian

[1] The surname of Petitioner and his family is omitted to protect his privacy.

therapy, swimming lessons, and "Floor Time" services. Petitioner also indicates that the existing program of services should be expanded to 40 hours per week[2]. The FDLRC disagrees with Petitioner's contentions.

FACTUAL FINDINGS

1. Petitioner is a boy who is now three years old, as he was born December 4, 2003. He was diagnosed with autistic disorder in early 2006, and made eligible for services under the California Early Intervention Services Act (Govt. Code section 95000 et. seq.) , also known as the "Early Start Program," on February 1, 2006. Those services are to be provided by the Respondent. There is no dispute as to Petitioner's eligibility for services; the dispute centers on what sort of services should be provided.

2. The Petitioner submitted, through his mother, a request for hearing dated August 16, 2006. The original hearing date was continued at the Petitioner's request, and then proceeded as set forth in the preamble, above. It is undisputed that jurisdiction was established to proceed in this matter.

3. A service coordinator from FDLRC first met with the Petitioner's family on February 17, 2006, and an IFSP—Individual Family Service Plan—was created on that date. The IFSP was created through the participation of the following persons: Mrs. D.; the service coordinator, Hector Gravina; Jean Johnson, Ph.D.; Avedis T. Yetenekian, Ph.D.; and two persons who served as interpreters for the family.[3]

4. The IFSP provides that Petitioner would receive two hours of center-based speech and language services per week, and an hour of occupational therapy (OT) each week, center-based. Furthermore, the child was to be assessed for sensory integration interventions and for discrete trial training services. (Ex. 6.)

5. An occupational therapy assessment was performed on February 21, 2006, and a report was generated on March 1, 2006. (Ex. 10.) The report concluded that Petitioner had significant delays in sensory processing as well as fine and gross motor skills. These deficits were believed to affect, negatively, Petitioner's ability to attend to tasks, engage with his parents, to maintain self-regulation, and to participate in age-appropriate activities. (Ex. 10, p. viii.) It was recommended that Petitioner receive OT with a sensory integrative approach at a frequency of one hour in the clinic, three times per week, with a review of progress six months after commencement of such services. (*Id*.)

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[2] The issues were not well defined in the Request for Hearing. The parties relied upon Exhibit 3, a letter dated July 26, 2006, to define the issues.

[3] The family is Turkish. It appears from the record that locating professional interpreters has, at times, been problematic. This has forced the family and the Regional Center to rely heavily on one or two family friends to facilitate communication. Those persons are not always available, despite their obvious generosity. Further, Mrs. D. feels that she has imposed upon the friendship of these persons, which distresses her, and she may be reluctant to call upon them. As a result of these circumstances, communications have been sometimes hampered.

6. A speech and language assessment had been performed prior to the IFSP meeting, by Gayle L. Slott, a speech and language pathologist. Petitioner was found to have "severely delayed receptive and expressive language skills." (Ex. 13, p. 5.) Ms. Slott therefore recommended two hours of speech and language per week, in 60 minute sessions. (*Id*.)

7. (A) An assessment for discrete trial training (DTT) was performed in March 2006. Discrete trial training is a behavioral intervention that has proven effective in the treatment of autistic children. It is expensive in that it requires many hours of services, which must be provided by persons with special training and skills. However, it is cost-effective, especially in the long run, as it has a relatively high probability of positive results. The assessors recommended a program of 20 hours per week, with up to 8 hours per month of supervision services. (See Ex. 9, p. 13.) The Respondent agreed to fund such services and did so.

(B) Thereafter, Mandy Moradi. Psy.D., evaluated the Petitioner and she recommended that the DTT services increase to 25 hours per week. In part, she relied upon the recommendation of B.J. Freeman, Ph.D., a Professor Emeritus at U.C.L.A., who has considerable expertise in the diagnosis and treatment of autism. (See Ex. 16 for Dr. Freeman's report, at page 7, where she recommended 25 hours per week of intensive one-to-one treatment for Petitioner.) Respondent followed that recommendation, and increased the level of DTT services to Petitioner from 20 to 25 hours per week.

8. Thus, as of the time of the hearing, the Respondent was funding five hours per week of speech and language services, three hours per week OT, and twenty-five hours per week of DTT services. It should be noted that the speech services and the OT services were clinic-based services. All of the evidence supports the finding that as of the time of the hearing, the foregoing services were appropriate to meet the Petitioner's needs. Further, since the child became eligible, the Respondent has funded dental surgery, and a neurological exam with an MRI test. Translators have been funded, and at times Respondent has paid for taxis to take the child and/or his mother to various appointments, because the family has only one car, which Petitioner's father must use in his business.

9. At the outset of the parties' relationship, there were problems with instituting some of the services, and in maintaining them. This was true in the case with the speech services, as FDLRC attempted to find someone who could provide the speech services in the child's native language. In terms of services, FDLRC has agreed to provide such services after the child's third birthday (when such services might be taken over by his school district) in order to compensate for the delayed delivery of services.

10. (A) Petitioner's mother is very concerned that the service package is not meeting her son's needs. She observes that he does not play like other children, either with toys or with others. She requests that FDLRC provide "Floor Time" services, either along with the behavioral services, or in addition to the current services.

(B) Dr. Moradi testified about the advisability of adding floor time to the services currently provided to Petitioner and she is of the firm professional opinion that such a step should not be taken, especially at this time. She relied on research in coming to her opinion, research that shows that an eclectic type of therapy package is not beneficial for autistic children, at least before five years of age, and especially where a behavioral program such as DTT is in place. In cases such as Petitioner's, it is best to avoid many transitions and changes in activity, in order to avoid or at least minimize confusion on the child's part. Because DTT is intensive, and limited in its transitions, the risk of confusion is minimized where that therapy is the main focus. .

(C) Dr. Moradi acknowledged that she has not met Petitioner or personally observed him. She recognized Mrs. D.'s concern that the child is not playing and not connecting socially. However, she reiterated her clinical recommendation, based on her experience and view of the scientific evidence, that the parties should not to bring Floor Time into the current mix.

(D) Dr. Moradi also opined that there should be at least two and one-half hours of clinic and supervision time provided per week along with the 25 hour per week of behavioral training. Furthermore, she was clear that Petitioner should not start school at this time, but instead should have another year of DTT at the current levels before starting school. In other words, she is of the firm opinion that at least 18 months of DTT should be provided before any significant change in programming, such as pre-school enrollment, takes place. Dr. Moradi believes that the DTT program must be provided on an intensive basis for a significant period of time before concrete results can be obtained, and consolidated; the program must be given a chance to work.

11. Dr. Moradi also provided her opinion regarding the potential provision of services such as music therapy and equestrian therapy, and the other services requested by Petitioner. Without commenting on the efficacy of the programs alone, she opined that such services should not be mixed in with the DTT program. Again, this would take the child toward an eclectic program with several transitions, which in her professional opinion is not advisable at any time in the near future. She pointed out that occupational therapy and speech services are two therapeutic regimes that do not fall into the types of services that cause excess transitions or confusion, noting that research has indicated that such services may be included in the intensive types of programs that should be provided to autistic children, especially when they are young.

12. Dr. Moradi was credible in her testimony, both in terms of her demeanor, and the content of the testimony. She responded to questions in a direct manner, without hint of prevarication or bias for or against either party. Her opinions were consistent with information provided to the undersigned during training and education conducted prior to the hearing, and with prior experience.[4]

[4] Under Government Code section 11425.50, subdivision (c), a hearing officer may evaluate evidence based on his or her experience and specialized knowledge.

13. Petitioner was unable to counter the opinions provided by Dr. Moradi with any expert opinion testimony. It appears that his mother wants Floor Time and other programs for her son because third persons recommended such to her, but they did so without evaluating his entire situation and his current program. Petitioner's mother is frustrated by what she perceives as a lack of progress on Petitioner's part, but that alone does not support a finding that the program should change at this time. That Ali continues to demonstrate symptoms of autism, such as a failure to play with other children or to connect to the world around him, does little more than corroborate the findings that Petitioner indeed suffers from autism.

14. The program that was being provided to Petitioner as of October 2006 was appropriate to meet his needs from a therapeutic standpoint. His program amounted to 33 hours per week of therapy, primarily devoted to behavioral intervention. While other potential services were not being provided, such as respite care, it must be noted that the Respondent had provided some medical or dental services, as well as transportation. The Petitioned did not provide sufficient evidence to justify either a change of therapeutic services to include Floor Time, and he did not provide any evidence that would justify a requirement that FDLRC provide swimming lessons, music therapy, or the other requested services. Instead, it appears that an intensive program of DTT should remain in place for at least another year, although the amount of supervision time should be consistent with Dr. Moradi's recommendation.

LEGAL CONCLUSIONS

1. Petitioner is entitled to receive services and supports under the California Early Intervention Services Act, Government Code, Government Code section 95000 et. seq., and applicable Federal Laws (20 USC §1431, et. seq.), based on Factual Finding 1.

2. Services shall be provided to an Early Start consumer pursuant to an IFSP. (Govt. Code, §§52100 & 52106.) The IFSP shall address the infant's or toddler's developmental needs. (Govt. Code, § 52100.)

3. The party contends that the IFSP is inadequate to meet the consumer's needs bears the burden of proving the facts necessary to reach that conclusion. (Evid. Code, § 500.)

4. Petitioner has not established that the IFSP fails to meet his developmental needs, based on Factual Findings 1 through 14. The available evidence established that he is receiving an intensive program of more than 30 hours per week, a program based on an intense level of behavioral interventions. Petitioner has not established that the program should be augmented or changed at this time, in fact, the evidence was against the conclusion

that any fundamental changes should be made in the next 12 to 18 months. However, Dr. Moradi's opinion that the supervision time should be equal to two and one-half hours per week should be followed. (See Factual Finding 10(D).)

5. Petitioner's request for additional services is denied, however, the supervision provided as part of the DTT services shall increase to 2.5 hours per week.

Discussion and Rationale:[5]

The record established that the Regional Center instituted a program of behavioral intervention for Petitioner soon after he was found eligible for services, and it made reasonable efforts to assess the child's needs and to work across a significant language barrier. In recent years behavioral interventions of the type being provided to Petitioner have been found, through scientific research and study, to generally provide the best form of intervention for autistic children. Behavioral programs can, by their very nature, be expensive, time-consuming, and sometimes slow to reach fruition. In this case FDLRC not only instituted such a program, but increased the amount of DTT services when advised to do so by Doctor Moradi. Such conduct adds credence to the regional center's position in the matter.

Research has also shown that intense programs of 25 to 40 hours per week, provided early in an autistic child's life, are most likely to yield positive results. Here FDLRC started with a program of 28 hours per week, and increased the program to 33 hours per week. This was well within accepted protocols for treatment.[6]

In this case the only expert testimony was provided by Dr. Moradi. She opined that to change the "mix" of interventions at this time, or in the near future, would be counter-productive. There was virtually no reliable evidence to counter her position. The hearsay opinions of third persons, provided to Petitioner's mother, could not outweigh the opinions of Dr. Moradi.

Here there was little or no evidence in support of Petitioner's claim for music therapy, equestrian therapy, swimming lessons, or Floor Time, while Dr. Moradi opined that the

[5] The section that follows is within the ambit of Government Code section 11425.50, subdivision (d), and meant to provide a discussion of legal issues raised as well as key evidence, and a rationale for the findings, conclusions, and proposed order. So far as stated, it is intended to augment credibility findings. However, the evidence and authorities referenced are not necessarily the only ones relied on in reaching the decision.

[6] At one point Petitioner referenced a letter written by an FDLRC representative in May 2006, which stated that interventions for autistic children should be at least 40 hours per week. The letter, Exhibit A, was relied upon a s evidence that total programming for Petitioner should be increased from the present level of 33 hours per week. However, the testimony established that the letter was written to Mr. D.'s employer, at the request of Petitioner's parents, as part of an effort to justify Mr. D. staying in the United States, rather than him being transferred to a job outside of this country. (Mr. D. was then employed in the Turkish Consulate.) The statement in the letter that at least 40 hours of programming should be provided was an overstatement.

child's program should be based on DTT, OT, and speech therapy. That the services will not be ordered in this case should not be considered as a finding that such services are not available under Early Start, or are not efficacious in some cases. Instead, they can not be ordered based on this record.

ORDER

Petitioner's request for the provision of music therapy, equestrian therapy, swimming lessons, and Floor Time services is denied. His request for an increase in overall services is denied, except that that component of his DTT services known as supervision shall increase to 2.5 hours per week.

January 19, 2007

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Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings